

Law



PATENT
Customer No. 22,852
Attorney Docket No. 8048.0045-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Jean-Louis H. GUERET)	Group Art Unit: 3723
)	
Application No.: 10/790,179)	Examiner: Shay Lynn KARLS
)	
Filed: March 2, 2004)	Confirmation No.: 3236
)	
For: APPLICATOR AND APPLICATION)	
DEVICE INCLUDING THE)	
APPLICATOR)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO OFFICE ACTION

In reply to the Office Action dated October 18, 2007, Applicant respectfully requests that the Patent and Trademark Office reconsider the present application and withdraw all of the claim rejections for the reasons explained below.

Claims 1-68 are pending in this application, and claims 1 and 34 are independent. Of the pending claims, claims 7, 10, 15, 19, 22, 42, 45, 50, 54, and 57 have been withdrawn from consideration as being drawn to a non-elected species.

35 U.S.C. § 102(b) Rejections

In the Office Action, claims 1-6, 8, 11-12, 14, 16-18, 20-21, 23-41, 43, 46, 48-49, 51-53, 55-56, and 58-68 were rejected under 35 U.S.C. § 102(b) as being anticipated by

U.S. Patent No. 7,156,105 to Gueret (hereinafter "Gueret '105"). Applicant respectfully traverses this rejection.

As an initial matter, Gueret '105 is not prior art under 35 U.S.C. § 102(b). This application was filed on March 2, 2004; however, Gueret '105 did not issue until January 2, 2007. Since Gueret '105 issued after the filing date of this application, it is not prior art under § 102(b). Accordingly, this rejection is improper and should be withdrawn.¹

Independent claim 1 recites an applicator including, among other things, at least one "bundle being split into at least two sub-bundles extending away from the end portion, the at least two-sub bundles defining second and third rows of bristles extending at least in part outside of the support." Independent claim 34 similarly recites "at least one bundle of bristles associated with the support, the bundle being split into at least a first sub-bundle ... and a second sub-bundle" Gueret '105 does not teach or suggest these features of the claimed invention.

Gueret '105 discloses an applicator for applying a product to hair. The Examiner relies primarily on Fig. 23 of Gueret '105, which "shows an applicator 150 constituting a brush comprising an elongate support 151 of triangular cross-section defining three faces 152 disposed like the sides of an isosceles triangle." Gueret '105, col. 12:26-29. The support 151 has three holes 153 passing through it. The holes 153 cross each other in the center of the support 151 and open onto the faces 152. *Id.* at col. 12:29-33. Gueret '105 also teaches that three separate "[t]ufts of bristles 155 may be inserted in

¹ The application leading to Gueret '105 (No. 09/860,601) published on January 31, 2002, as US 2002/0011251 A1. Applicant submitted a copy of this publication to the Office in an Information Disclosure Statement, dated March 2, 2004. However, the Examiner has not applied any rejections based on this published application.

the holes 153 and the bristles may be held in position completely or partially by the bristles crossing in the central region of the support.” *Id.* at col. 12:34-37.

Gueret '105 does not teach or suggest a “bundle being split into at least two sub-bundles,” as recited in claim 1, or a “bundle being split into at least a first sub-bundle ... and a second sub-bundle,” as recited in claim 34. Indeed, the Examiner appears to acknowledge this fact, noting that “the bristles in figure 23 might be three separate bundles” (i.e., as opposed to a single bundle split into sub-bundles). Office Action at 3. While the Examiner speculates that “a single bristle bundle *could have been used* and positioned such that the bristle bundle is split among the openings 153 in the support” (Office Action at 3 (emphasis added)), Gueret '105 contains no teaching or suggestion of that feature. In fact, to the contrary, Gueret '105 expressly teaches using three separate bundles that may be held in position by the bundles crossing each other in the central region of the support 151. Gueret '105, col. 12:34-37. Accordingly, if anything, Gueret '105 teaches away from the claimed invention.

As explained in MPEP 2131, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Since Gueret '105 does not disclose a bundle of brushes being split into multiple sub-bundles, as recited in claims 1 and 34, this reference does not anticipate. Therefore, the rejection should be withdrawn.

Claims 2-6, 8, 11-12, 14, 16-18, 20-21, 23-33, 35-41, 43, 46, 48-49, 51-53, 55-56 and 58-68 depend from one of claims 1 and 34, and are therefore allowable over Gueret '105 for at least the same reasons explained above.